the right of the railroad company to make reasonable rules. Such a rule, the court says would be more practical and probably result in less fraud and corrupt use of transfers. *Frederick v. R. R. Co.*, 37 Mich. 342.

The case under discussion in Connecticut arrived at the same conclusion as the above holding. The court affirmed that the duty of deciding the passenger's right to ride over the second car devolved upon the conductor of that car and the only evidence of the right was the transfer. The passenger should have paid his fare and sued for the defendant's breach of promise to carry him. The conductor was not considered under an obligation to accept the passenger's statement that the mistake in the transfer was due to the fault of the first conductor. His right to ride for the time being was conclusively evidenced by the terms of the ticket. *Mosher v. St. Louis I. M. & S. Ry. Co.*, 127 U. S. 390.

That the ticket should be conclusive evidence of the passenger's right to travel would seem to be the more practical rule. Any other view makes possible fraudulent statements in regard to the ticket. If the conductor is compelled to take the word of the passenger, what is to hinder the passenger's using a ticket two months old and saying that it had been punched wrongly? An electric road will certainly not make a practice of issuing wrong transfers where an action for damages for breach of contract will always lie; but if the opposite conclusion is adopted, a road is compelled to allow passengers to ride on their own statements of the transactions, and the only remedy open to the company is to bring suits against innumerable unknown persons to decide whether or not an extra fare is owed.

A carrier can always be reached by process if any mistake has been made, but it would impose a great hardship on any corporation to compel it to identify and serve a summons on every passenger who has ridden on a disputed transfer. Considered, therefore, from this point of view, a conclusive transfer is the fairer solution of the problem.

COAL MINES; THE LAW OF SUBJACENT SUPPORT.

In the case of *Griffin v. The Fairmont Coal Co.*, 53 S. E. 24 (W. Va.), the Supreme Court of Appeals of West Virginia recently handed down a decision which apparently disapproves and repudiates the vital principles of lateral and subjacent support as they have been previously declared by every American court in the interpretation of those contracts which pass title to coal underlying the surface of land. In this case the court decided (Poffenberger, J., *dis-*

senting) that where a deed conveys the coal under a tract of land together with the right to enter upon and under said land and to mine, excavate and remove *all* of said coal, there is no implied reservation in such an instrument that the grantee must leave enough coal to support the surface.

The early English cases held, without exception, that the surface owner had a right to demand sufficient support for the surface, even if to that end it was necessary to leave every pound of coal untouched under the land. *Humphries v. Brogden,* 1 Eng. Law & Eq. 250; *Earl of Glasgow v. The Alum Co.,* 8 Eng. Law & Eq. Rep. 13. In the pioneer case of *Harris v. Ryding,* 5 M. & W. 59, Baron Parke said: "I do not mean to say that all the coal does not belong to the defendants, but that they cannot get it without leaving sufficient support for the surface in its natural state." Practically all of the cases base their opinion on one of two grounds, *i. e.,* either on an implied reservation of sufficient support, or on the maxim: "*sic utere tuo ut alienum non laedas.*" In the case of *Smith v. Darby,* 42 Law Journal Rep. N. S. Q. B. 140, it was said that there was a presumption in favor of the grantor. That is, the courts adopted the curious mode of assuming, in the first instance, the existence of an intention that the right of support should not be disturbed, and then proceeded to consider whether the provision used could not be reconciled with that intention.

Owing to the extensive experience of the English courts in applying the principles of mining law, the American courts naturally followed implicitly in their footsteps. The right of support was said to be, not in the nature of an easement, but *ex jure naturae.* Hence it could not come within the class of those ambiguities which were to be construed most favorably to the grantee, *Horner v. Wilson,* (Pa.) 21 Am. Rep. 61. Where one person makes a grant of land to another, reserving the minerals in the land, a covenant will be implied, in the absence of all words to that effect, and solely from the nature of the transaction, that the grantor, in removing the minerals reserved, should leave or provide sufficient support for the surface, *Lord v. Carbon Iron Manufacturing Co.,* 42 N. J., Eq. 158. This right of support may not be taken away by mere implication from language not necessarily importing such a result. *The Law of Mines and Minerals in the United States, by Barringer and Adams,* 676. To substantially the same effect are *Livingstone v. Moingona Coal Co.,* 49 Iowa 369; *Jones v. Wagner,* (Pa.) 5 Am. Rep. 385; *Coleman v. Chadwick,* 80 Pa. 81; *Nelson v. Hoch,* 14 Phil. 65.

In the case under discussion the whole decision hangs on the construction of the word *all*. The majority in their opinion contend that since there is a grant to remove *all* the coal, there is an implied grant to take away the support of the surface, because the destruction of the surface is the natural and inevitable result of such removal from under the surface; contracts of this nature, it is said, should be construed according to their natural and literal meaning without any preconceived assumption of an intention that the right of support should not be disturbed.

This view seems to us to be founded on sound reason although opposed to what has hitherto been a settled rule of law. If the surface owner has agreed to the act, anticipated the injury and received compensation therefor it is not just that, by invoking the aid of an implied assumption in his favor, or the principle of *sic utere tuo ut alienum non laedas,* he should be able to recover a second compensation. His injury is rather *damnum absque injuria.*

THE RIGHT OF A STATE TO CANCEL THE LICENSE OF A FOREIGN CORPORATION, FOR REMOVING SUITS TO A FEDERAL COURT.

It is a well accepted principle that a state may allow a foreign corporation to transact business within its limits subject to any restriction not repugnant to the Federal Constitution.

Whether a state has the right to provide that if a foreign insurance company shall remove a case to the Federal Court which has been commenced in a state court, the license of such company shall be thereupon revoked, was decided affirmatively on May 14th, 1906, by the U. S. Supreme Court, Justices Harlan and Day *dissenting.*

Two cases, *The Security Ins. Co.* and *Traveler's Ins. Co. v. Henry E. Prewitt,* insurance commissioner of Kentucky, were tried together on appeal from the Kntucky Court of Appeals. The former was brought in a lower court to avoid the effect of a revocation of a permit to do business in the state of Kentucky and the latter to enjoin the cancellation of the permit.

In 1874 in the case of *Home Ins. Co. v. Morse,* 87 U. S. 445, it was decided that a statute of the state of Wisconsin requiring a foreign insurance company to agree not to remove any suit for trial into the United States Circuit Courts or Federal Courts was unconstitutional and the agreement void as ousting the jurisdiction given them by the Federal Constitution and statutes of the United States. The point on which this decision turned was that the agreement was exacted as a *condition precedent* to the granting of the license by the state. In a later case, *Doyle v. Continental Ins. Co.,* 94 U. S. 535,